

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBERT S. HONKEN,

Petitioner,

vs.

SCOTT R. FRAKES,

Respondent.

8:21CV437

MEMORANDUM AND ORDER

This matter is before the court on Petitioner's motion (filing 14) requesting an extension of time to file his brief in opposition to Respondent's summary judgment motion. Respondent filed his Motion for Summary Judgment (filing 10), Brief in Support (filing 11), and state court records (filing 11) on February 16, 2022. On March 28, 2022, Respondent filed a Notice of Submission and notified the court that Respondent would not file a reply brief because Petitioner had not filed a brief by the March 18, 2022 deadline. (Filing 13.) Petitioner now asks for additional time to file a brief claiming that he "was not made aware by the Court that it was time for him to file a brief on the Respondent's Motion for Summary Judgment." (Filing 14.)

In the court's January 20, 2022 Memorandum and Order (filing 6), the court set forth how this matter would progress. In particular, the court's progression order provided that if Respondent elected to file a motion for summary judgment, then "[n]o later than 30 days following the filing of the motion for summary judgment, Petitioner must file and serve a brief in opposition to the motion for summary judgment." (Filing 6 at CM/ECF p. 3, ¶ 2.D.) Thus, Petitioner was made aware of the relevant deadlines associated with Respondent's filing of a motion for summary judgment.

Petitioner has filed his motion for an extension of time to file his brief twenty-six days after his brief was initially due. Under the Federal Rules of Civil Procedure, “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time: . . . on motion made after the time has expired if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B); *see also* Fed. R. Civ. P. 81(a)(4) (Federal Rules of Civil Procedure apply to habeas proceedings to the extent other statutes or rules do not govern). Upon consideration, and out of an abundance of caution, the court will grant Petitioner’s motion for an extension of time to file his brief. Petitioner is warned that no further extensions will be granted absent good cause.

IT IS THEREFORE ORDERED:

1. Petitioner’s motion for extension of time (filing 14) is granted. Petitioner shall have until **May 16, 2022**, to file his brief in opposition to Respondent’s summary judgment motion.

2. If Petitioner files a brief, then Respondent shall have 30 days thereafter to file and serve a reply brief. If Petitioner fails to file a brief, then this matter will be considered fully submitted for decision.

3. The Clerk of Court is directed to set a pro se case management deadline using the following text: **May 16, 2022**: Petitioner’s brief due.

Dated this 15th day of April, 2022.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge